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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

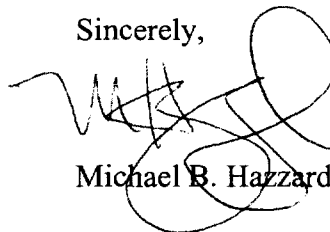
Re: Merger of Qwest Communications International Inc. and
U S WEST, Inc., CC Docket No. 99-272.

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are an original and four copies of the Comments of Allegiance Telecom, Inc.

Would you kindly date-stamp the additional copy provided and return the same to the bearer. Thank you for your assistance.

Sincerely,



Michael B. Hazzard

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

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OCT 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Merger of Qwest Communications) CC Docket No. 99-272
International Inc. and)
U S WEST, Inc.)

**COMMENTS OF
ALLEGIANCE TELECOM, INC.**

Allegiance Telecom, Inc. ("Allegiance"), by its attorneys, hereby submits its comments in response to the Public Notice released on October 19, 1999 (DA 99-2228) in the above-captioned proceeding. The Public Notice invites interested parties to comment on issues raised by the divestiture plan that Qwest Communications International Inc. ("Qwest") and U S WEST, Inc. ("U S WEST") propose to implement in order to comply with section 271 of the Communications Act of 1934, as amended ("Act"), if the Commission approves the merger of these companies.

In these comments, Allegiance recommends that the Commission require Qwest to provide supplemental information regarding discrete issues, including the specific types of traffic that Qwest plans to carry over its interLATA network within the U S WEST service territory after obtaining merger approval. In addition, to ensure compliance with any divestiture plan approved by the Commission, Qwest should be required to retain an independent, third-party auditor, similar to that utilized by SBC/Ameritech for collocation, to review Qwest's compliance with that plan and certify to the Commission before any merger is consummated that Qwest has fulfilled the plan's requirements.

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**I. THE COMMISSION SHOULD REQUIRE QWEST TO SUBMIT
ADDITIONAL INFORMATION REGARDING SPECIFIC IN-REGION
INTERLATA USES OF THE QWEST BACKBONE NETWORK**

Ensuring ongoing compliance with section 271 is among the most critical issues before the Commission in reviewing the proposed merger between Qwest and U S WEST. As discussed below, there are three areas for which Qwest needs to provide supplemental information in order for the Commission to decide whether Qwest's compliance plan satisfies section 271.

1. In-Region, InterLATA Uses Of The Qwest Network Post Merger. Qwest's existing fiber optic network traverses the U S WEST territory, and as the divestiture plan shows, Qwest presently provides numerous interLATA services over its network. In its divestiture plan, Qwest notes that it "does not plan to sell its existing fiber optic transmission plant."¹ Qwest, however, does not specify the particular types of interLATA traffic and services that Qwest plans to continue to carry over its network in U S WEST's region after the merger has closed. Until such time as Qwest provides this additional information, the Commission will lack adequate record evidence to determine whether the proposed post-merger in-region activities of Qwest and U S WEST will comply with section 271.

2. Switch Port Divestiture. Qwest states that, as part of the proposed *Divestiture Plan*, the Buyer of Qwest's in-region, interLATA services "may contract for the ability to lease ports on Qwest data switches."² Qwest notes that the "lease of a switch port is not the provision of

¹ *Qwest Plan for Divestiture of InterLATA Business in the U S WEST Region*, 1 ("Divestiture Plan").

² *Id.* at 7.

‘telecommunications,’ let alone interLATA services.”³ Allegiance agrees with this view, but there appears to be some ambiguity concerning whether, and to what extent, Qwest plans to provide transport in conjunction with the lease of its switch ports to Buyer.

In describing its proposal to lease ports on its switches, Qwest notes that it “would permit Buyer to collocate at its data switch premises and connect non-Qwest interexchange transmission to the Buyer-leased ports.”⁴ Further, Qwest states that “Qwest-prohibited services would be transmitted by Buyer over Buyer’s own interLATA circuits.”⁵ It may be that Qwest intends this statement to mean that Qwest will not provide any interLATA service that originates or terminates at a leased port. It may also be that in Qwest’s view, there are interLATA services that it will be permitted to offer in conjunction with its lease of a switch port to Buyer.

In Allegiance’s view, Qwest, consistent with section 271, may originate or terminate any telecommunications traffic on the line side of its data switches, so long as the line side “loop” does not cross a LATA boundary. On the trunk side, Qwest similarly may not transport traffic across LATA boundaries. Qwest should specify whether, in cases where it leases switch ports to Buyer, it plans to provide any transmission services or facilities to Buyer on the trunk side of the port. Without elaboration from Qwest regarding the exact nature of these services, there is no way to determine whether the proposed offering will comply with section 271.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

3. In-Region, InterLATA Internet And Information Services. As a general matter, BOCs may not provide in-region, interLATA information or telecommunications services until such time as they receive section 271 approval. The Commission has determined this prohibition bars a BOC from furnishing, absent section 271 approval, “an information service that incorporates as a necessary, bundled element an interLATA telecommunications component, provided to the customer for a single charge.”⁶ Further, beyond this basic determination, Qwest notes that “a number of proceedings now before the Commission raise questions about whether, and to what extent, Internet-related information services offerings constitute interLATA service offerings.”⁷ Qwest properly recognizes “[i]n the context of certain Internet-related offerings, the line separating information services from telecommunications services is not entirely clear.”⁸ The *Divestiture Plan*, however, fails to identify the “Internet-related” or other information services that Qwest currently provides within U S WEST’s region that could be viewed as interLATA offerings. Moreover, by characterizing the pending FCC proceedings as “generic to the entire industry,” Qwest appears to imply that the Commission may and should approve the proposed merger without resolving whether specific services that Qwest provides and will provide post-merger contravene section 271. We disagree.

If the Commission were to adopt a section 271 compliance plan as part of an order approving the proposed merger, its decision could be viewed as sanctioning Qwest’s continued

⁶ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 115 (1996).

⁷ *Divestiture Plan* at 16.

⁸ *Id.*

provision of any "Internet-related" or other information service not subject to divestiture. Qwest could eliminate this problem by ceasing to provide any such questionable services prior to closing through a transfer to Buyer. Alternatively, however, to preserve ongoing section 271 compliance, the Commission should affirmatively resolve any ambiguity surrounding Qwest's provision of interLATA information services before the merger closes, rather than relying on post-merger enforcement actions by competitors seeking to bring Qwest into compliance with section 271.

II. THE COMMISSION SHOULD REQUIRE QWEST TO RETAIN AN INDEPENDENT THIRD-PARTY TO CERTIFY QWEST'S COMPLIANCE WITH SECTION 271 PRIOR TO THE CLOSING OF THE PROPOSED MERGER

The stated purpose of the *Divestiture Plan* is to demonstrate how Qwest will "discontinue providing interLATA services in the U S WEST region, and assign all existing service obligations to one or more independent interexchange carriers."⁹ In approving any proposed merger between Qwest and U S WEST, the Commission would need to adopt a divestiture plan to ensure that Qwest is in compliance with section 271 before the merger is consummated. To demonstrate its commitment to section 271 and to resolve existing ambiguities, Qwest should volunteer to retain an independent, third-party auditor to evaluate Qwest's divestiture efforts and ensure both section 271 compliance prior to closing as well as ongoing section 271 compliance after closing.

⁹ *Id.* at 1.

The Commission recently approved a similar audit procedure in connection with its review of the SBC/Ameritech merger.¹⁰ Specifically, SBC/Ameritech committed to hire an independent, third-party auditor, or auditors, acceptable to the Chief of the Common Carrier Bureau.¹¹ The auditor is responsible for reviewing SBC/Ameritech's compliance with the Commission's collocation rules and issuing an attestation report resulting in a positive opinion (with exceptions noted) regarding whether the terms and conditions of SBC/Ameritech's collocation offerings comply with Commission rules.¹² Allegiance recommends that the Commission similarly require an auditor to review and certify, by affidavit or similar formal statement, Qwest's compliance with any Commission-approved divestiture plan.

In contrast to the SBC/Ameritech audit condition, the auditor's report on Qwest's section 271 compliance should be submitted to the Commission prior to the merger's closing, rather than subsequent to closing.¹³ Indeed, until such time as the independent, third-party auditor formally certifies Qwest's compliance with the Commission-approved divestiture plan, the Commission should not permit the merger to close. Section 271 compliance is fundamental to competition, and the Commission must ensure that Qwest/U S WEST will comply fully with section 271 before the merger is consummated. By agreeing to hire such an independent auditor, Qwest

¹⁰ *In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer of Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279, ¶ 387 (Oct. 8, 1999) ("*SBC/Ameritech Order*").

¹¹ *Id.* at Appendix C ¶ 39.

¹² *Id.*

¹³ *Id.* at Appendix C, ¶¶ 40-41.

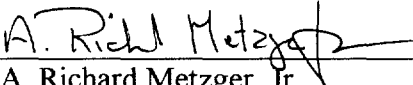
would demonstrate to the Commission and to competitors that it takes its section 271 obligations seriously and will comply with those statutory requirements.

III. CONCLUSION

For the reasons set forth above, the Commission should require Qwest to take the steps outlined in these comments in order to clarify how it will divest in-region, interLATA services to comply with section 271 of the Act prior to considering any proposed merger by Qwest and U S WEST. In addition, Qwest should commit to retain an independent, third-party auditor to certify compliance with section 271 prior to the closing of the proposed merger.

Respectfully submitted,

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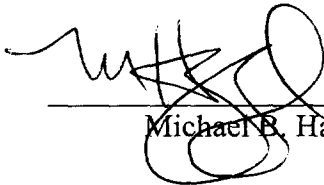

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Dated: October 26, 1999

CERTIFICATE OF SERVICE

I, Michael B. Hazzard, do hereby certify that on this day of October 26, 1999, I caused a copy of the foregoing Comments of Allegiance Telecom, Inc. to be served by messenger and first-class mail, postage prepaid, upon each of the parties on the attached service list.



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